Schedule F), which is granted by the Commission.

Under this new information collection, the Commission will collect the information, disclosures, and certifications required by § 73.6030(c) and (d) of the Commission's rules from each applicant seeking to convert to Class A status and will use the information, disclosures, and certifications to determine whether an applicant is qualified to convert to a Class A station. Without the information collected, the Commission will not be able to determine if an applicant is qualified to become a Class A station under the LPPA.

OMB Control Number: 3060–0928.

OMB Approval Date: May 7, 2024.

OMB Expiration Date: May 31, 2027.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule F (Formerly FCC 302–CA); 47 CFR 73.6028; Section 73.3700(b)(3); Section 73.3700(h)(2) and Section 73.3572(h).

Form Number: FCC Form 2100, Schedule F.

Respondents: Business or other for-profit entities, not-for-profit institutions; State, local, or Tribal Government.

Number of Respondents and Responses: 115 respondents; 165 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the collection of information associated with the LPPA is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 303, 307, 309, 311, 336(f), and the Low Power Protection Act, Public Law 117–344, 136 Stat. 6193 (2023).

Statutory authority for the collection of information associated with the CBPA is contained in 47 U.S.C. 154(i), 307, 308, 309, and 319, and the Community Broadcasters Protection Act of 1999, and the Middle Class Tax Relief and Job Creation Act of 2012.

Total Annual Burden: 460 hours.

Total Annual Cost: $41,725.

Needs and Uses: The FCC Form 2100, Schedule F is used by Low Power TV (LPTV) stations that seek to convert to Class A status; existing Class A stations seeking a license to cover their authorized construction permit facilities; and Class A stations entering into a channel sharing agreement. The FCC Form 2100, Schedule F requires a series of certifications by the Class A applicant as prescribed by the Community Broadcasters Protection Act of 1999 (CBPA). Licensees will be required to provide weekly announcements to their listeners: (1) informing them that the applicant has applied for a Class A license and (2) announcing the public's opportunity to comment on the application prior to Commission action.

On December 11, 2023, the Commission adopted a Report and Order, FCC 23–112, to implement the Low Power Protection Act (LPPA or Act), which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations. The Report and Order establishes the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, and the process for submitting applications. The Report and Order provides that applications to convert to Class A status under the Low Power Protection Act must be filed using FCC Form 2100, Schedule F. The application form requires certifications by the applicant as prescribed by the LPPA. This submission was made to OMB for approval of the modified FCC Form 2100, Schedule F. In addition, LPTV stations that file an application to convert to Class A status must provide local public notice of the filing of the application pursuant to 47 CFR 73.3580(c). Specifically, the station must both broadcast on-air announcements and give online notice. This submission also reflects the burden associated with that information collection and was made to request Office of Management and Budget (OMB) approval of that collection.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–11493 Filed 5–30–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 240522–0144; RTID 0648–XR132]

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Delaware River Atlantic Sturgeon (Acipenser oxyrinchus oxyrinchus) Population as an Endangered Distinct Population Segment Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of 90-day finding.

SUMMARY: We, NMFS, announce our 90-day finding on a petition to list the Delaware River population of Atlantic sturgeon as an endangered distinct population segment (DPS) of Atlantic sturgeon under the Endangered Species Act (ESA) and to designate critical habitat for the DPS. We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, we are denying this petition.

DATES: This finding was made on May 31, 2024.

ADDRESSES: Copies of the petition and related materials are available from the NMFS website at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/negative-90-day-findings.*

FOR FURTHER INFORMATION CONTACT: Lynn Lankshear, NMFS Greater Atlantic Regional Fisheries Office, Protected Resources Division, (978) 282–8473, *lynn.lankshear@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

A ''species'' is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). On July 19, 2023, we received a petition from the Delaware Riverkeeper Network (DRN) to list the Delaware River Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) population as a DPS, to list that DPS as endangered under the ESA, and to designate critical habitat for that DPS concurrent with the listing. The Delaware River Atlantic sturgeon population is currently protected under

the ESA as part of the New York Bight DPS of Atlantic sturgeon, and 137 kilometers (85 miles) of the lower Delaware River are included as part of the designated critical habitat for the DPS.

We listed the New York Bight DPS as endangered after two separate status reviews. The first status review, which was completed in 1998, was conducted by NMFS and the U.S. Fish and Wildlife Service (collectively the ''Services'') in response to a petition to list Atlantic sturgeon in the United States under the ESA. We concluded that listing Atlantic sturgeon as a subspecies [1] was not warranted (63 FR 50187, September 21, 1998). The second status review was completed in 2007. It concluded that there was new information to support listing Atlantic sturgeon in the United States as five DPSs (Atlantic Sturgeon Status Review Team (ASSRT), 2007).

On October 6, 2009, NMFS received a petition to list Atlantic sturgeon throughout its range as endangered or, alternatively, to list the five DPSs described in the 2007 status review. We reviewed the available information, including the 2007 Atlantic sturgeon status review report, and determined, in accordance with the Services' joint DPS Policy (61 FR 4722, February 7, 1996), that the U.S. populations of Atlantic sturgeon comprised five DPSs because they met both criteria of the policy—*i.e.,* that the populations are both ''discrete'' and ''significant'' (77 FR 5880, February 6, 2012; 77 FR 5914, February 6, 2012). Evidence to support the existence of discrete Atlantic sturgeon populations included temporal and spatial separation during spawning and the results from genetic analyses. The significance criterion was met because each identified DPS persists in an ecological setting that is unique relative to the taxon as a whole, and the loss of any of the five DPSs would result in a significant gap in the range of the taxon. After reviewing the best available information regarding each DPSs' current status and extinction risk, we listed four DPSs as endangered (including the New York Bight DPS) and one as threatened (77 FR 5880, February 6, 2012; 77 FR 5914, February 6, 2012).

The New York Bight DPS is defined in the regulations as all Atlantic sturgeon spawned in the watersheds that drain into coastal waters from Chatham, Massachusetts, to the Delaware-Maryland border on Fenwick Island (50 CFR 224.101). The Delaware River and the Hudson River populations of Atlantic sturgeon were the only known extant populations for the DPS when it was listed. We subsequently identified the areas of the Delaware River and the Hudson River where the physical and biological features essential for successful reproduction and recruitment of the respective Atlantic sturgeon populations are found. We designated these areas as critical habitat for the New York Bight DPS on August 17, 2017 (82 FR 39160).

We completed a 5-year review of the New York Bight DPS on February 17, 2022. In that review, we described new information available since the listing, including information that further supports our understanding of when spawning occurs in the Delaware River, the genetic assignment of Delaware River Atlantic sturgeon to the New York Bight DPS and the river-of-origin, and where the Delaware River Atlantic sturgeon occur in the marine environment (NMFS, 2022). We also described new information suggesting a possible spawning population in the Connecticut River for which research is on-going. As summarized in the 5-year review, the information available since the listing continues to support our determination in the 2012 listing rule that the New York Bight DPS is both discrete and significant relative to the taxon as a whole. We found no new information that would change our determinations regarding the application of the DPS Policy, the status of the DPS, or its designated critical habitat (NMFS, 2022).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce shall make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). If NMFS finds that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a ''positive 90-day finding''), we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial data. In such cases, within 12 months of receipt of the petition, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted. Because the finding at the 12-month stage is based on a more thorough review of the best available information, as compared to the narrow scope of review at the 90-day stage, a ''positive 90-day finding'' does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). The Services joint DPS Policy clarifies the agencies' interpretation of the phrase ''distinct population segment'' for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722, February 7, 1996). A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms to address identified threats; (5) or any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(h)(1)(i)) define ''substantial scientific or commercial information'' in the context of reviewing a petition to list, delist, or reclassify a species as credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered substantial information. In reaching the initial (90-day) finding on the petition, we consider the information described in sections 50 CFR 424.14(c), (d), and (g) (if applicable) and may also consider information readily available at the time the determination is made (50 CFR 424.19(h)(1)(ii)).

[1] Our finding considered whether listing Atlantic sturgeon in its North American range, including Atlantic Canada, was warranted. 63 FR 50187.

Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted depends in part on the degree to which the petition includes the following types of information: (1) information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether, and to what extent, any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.,* the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of regulatory protections and effectiveness of conservation activities by States, as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. See 50 CFR 424.14(d).

We may also consider information readily available at the time the determination is made (50 CFR 424.14(h)(1)(ii)). We are not required to consider any supporting materials cited by the petitioner if the petitioner does not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.,* publications, maps, reports, and letters from authorities). See 50 CFR 424.14(c)(6) and (h)(1)(ii).

The ''substantial scientific or commercial information'' standard must be applied in light of any prior reviews or findings we have made on the listing status of the species that is the subject of the petition (50 CFR 424.14(h)(1)(iii)). Where we have already conducted a finding on, or review of, the listing status of that species (whether in response to a petition or on our own initiative), we will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review or finding. Where the prior review resulted in a final agency action—such as a final listing determination, a 90-day not-substantial finding (*i.e.,* negative 90-day finding), or a 12-month not-warranted finding—a petition will generally not be considered to present substantial scientific and commercial information indicating that the petitioned action may be warranted unless the petition provides new information or analysis not previously considered. See 50 CFR 424.14(h)(1)(iii).

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We accept the petitioner's sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation, or that is contradicted by other available information, will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review could conclude it supports the petitioner's assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding.

To make a 90-day finding on a petition to list a species, we first evaluate whether the information presented in the petition, in light of the information readily available in our files, indicates that the petitioned entity constitutes a species eligible for listing under the ESA. Next, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either a threatened or endangered species, as defined by the ESA. This may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate whether the petition presents any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity, or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate whether the petition presents information suggesting potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1) of the ESA.

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act, or have acted, on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion. We then assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or State statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do not constitute a recommendation by NatureServe for listing under the ESA because NatureServe assessments have different criteria, evidence requirements, purposes, and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide (*https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories*). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats in accordance with the ESA and our implementing regulations as discussed above.

Analysis of Petition

The petitioner requests that we list the Delaware River population of Atlantic sturgeon as a separate DPS under the ESA, list that DPS as endangered, and designate critical habitat for the DPS. As noted above, the Delaware River population of Atlantic

sturgeon is currently afforded the protections of an endangered species because it is part of the ESA-listed, endangered New York Bight DPS of Atlantic sturgeon. The petitioner did not request any other changes to the New York Bight DPS that may be necessary if the Delaware population was listed as its own DPS (*e.g.,* changes to the regulatory definition of the New York Bight DPS without the Delaware River population or changes to the status of the New York Bight DPS).

As noted above, where we have already conducted a finding or review of the listing status of a species (whether in response to a petition or on our own initiative), we will evaluate any petition received thereafter seeking to list, delist, or reclassify that species to determine whether a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted despite the previous review of finding. Therefore, despite our previous determination that the Delaware River population of Atlantic sturgeon is part of the New York Bight DPS, we evaluated whether this petition provides new information or a new analysis not previously considered to determine whether the petitioned action may be warranted.

The petitioner asserts that there has been significant research following the 2007 status review (ASSRT, 2007) and the 2012 listing determinations for the Atlantic sturgeon DPSs, and that the information, scientific studies, and expert analyses are available in the ''relevant literature'' section provided at the end of the petition. The petitioner did not, however, cite to specific references for the assertions that they made in the petition. We reviewed the literature provided by the petitioner to identify whether that literature provides any relevant new information that became available after the listing of the New York Bight DPS under the ESA (77 FR 5880, February 6, 2012) and after we completed the literature review for the 5-year review of the New York Bight DPS (NMFS, 2022), and to identify any other information that we had not previously considered.

We found that we have already considered most of the literature that was provided by the petitioner, and we have cited it either in the 2007 status review (ASSRT, 2007), the listing determinations (77 FR 5880, February 6, 2012; 77 FR 5914, February 6, 2012), or in our recent 5-year review for the New York Bight DPS (NMFS, 2022). The studies that focused on genetics related to the Delaware River population (*e.g.,* King *et al.,* 2001; Waldman *et al.,* 1996a, 1996b, 1998, 2002; Wirgin *et al.,* 2000) provided some of the earliest results that documented genetic differentiation among Atlantic sturgeon populations. These results were described and used by the ASSRT to inform the 2007 status review (ASSRT, 2007). Additional genetic analyses were conducted for the 2007 status review to inform whether there were discrete populations of Atlantic sturgeon (ASSRT, 2007). We considered all of this information as well as the results of Wirgin *et al.* (2007) and Grunwald *et al.* (2008), which became available after completion of the 2007 status review, in reaching our listing determinations (77 FR 5880, February 6, 2012; 77 FR 5914, February 6, 2012). There was no new information regarding the differentiation of the Atlantic sturgeon populations, in general, or for the New York Bight DPS, specifically, when we completed the 5-year review for the DPS (NMFS, 2022). We did, however, review and describe new life history information for the New York Bight DPS (*e.g.,* distribution in their marine range, occurrence in certain coastal estuaries) that became available as a result of studies that used genetic analysis to identify the origin of the individual sturgeon captured (NMFS, 2022). The genetic studies reviewed and cited for the 5-year review were Dunton *et al.* (2012), Kazyak *et al.* (2021), O'Leary *et al.* (2014), Waldman *et al.* (2013, 2019), and Wirgin *et al.* (2015a, 2015b); all of which the petitioner also lists in the ''relevant literature.''

Some of the sturgeon studies provided by the petitioner can be found in NMFS' files on Atlantic sturgeon but do not provide information relevant to considering whether the Delaware River population of Atlantic sturgeon may meet the discreteness and significance criteria of the Service's joint DPS Policy. These include Balazik *et al.* (2017), which described the James River populations of Atlantic sturgeon; Farrae *et al.* (2017), which described the Edisto River populations of Atlantic sturgeon; and Panagiotopoulou *et al.* (2014a and 2014b), which described methodology for analyzing genetic information of North American and European stocks of Atlantic sturgeon. We could not make any connection between these studies and the petitioner's statements that the Delaware River population of Atlantic sturgeon is discrete and warrants listing as its own, endangered DPS.

We identified eight reports or publications in the ''relevant literature'' section at the end of the petition that became available after we completed our literature search for the 5-year review of the New York Bight DPS. Four of these references relate to Atlantic sturgeon genetics (*i.e.,* White *et al.,* 2021a, 2021b, 2022; Wirgin *et al.,* 2023), and four relate to impacts to the Delaware River population of Atlantic sturgeon or its habitat (*i.e.,* Delaware River Basin Commission (DRBC), 2022a, 2022b; Environmental Research and Consulting (ERC) and Verdantas, 2022; Hagy, 2023).

Accordingly, we reviewed these eight references to determine whether they provide new information to show that the Delaware River population of Atlantic sturgeon may meet the criterion of the Service's joint DPS Policy (61 FR 4722, February 7, 1996). First, and as discussed below, we focused on the assertions made by the petitioner regarding discreetness, the first prong in the DPS analysis. We considered information in our files, and the four new references pertaining to genetics, to determine if the petition presents new information not previously considered with regard to whether the Delaware River population may be discrete. We also reviewed the information provided from the other four references (DRBC, 2022a, 2022b; ERC and Verdantas, 2022; Hagy, 2023), but found they did not contain new information that informed whether the Delaware River population may be discrete.

The petitioner claims that the Delaware River population of Atlantic sturgeon is discrete because it is genetically unique with characteristics found only in the Delaware River population. The petitioner's conclusion presents only part of the information available in the literature with regard to unique characteristics found in sturgeon populations. Some mitochondrial haplotypes and some microsatellite alleles are unique to some individuals of the Delaware River population. However, that does not mean that the population is discrete. The results of analyses conducted for the 2007 status review revealed that some mitochondrial DNA haplotypes were unique to specific Atlantic sturgeon river populations, such as the A5 haplotype for the Delaware River population (ASSRT, 2007). However, only a minority of the Delaware River sturgeon that were tested had the unique haplotype. The results of Wirgin *et al.* (2007) and Grunwald *et al.* (2008) provided additional information that the A5 haplotype is found in only a minority of the fish belonging to the Delaware River population. Wirgin *et al.* (2007) and Grunwald *et al.* (2008) also found that haplotypes B and B1 are found only in the Delaware River and the Hudson River populations. Overall, the results of studies that we reviewed and considered as part of the 5-year

review of the New York Bight DPS support the conclusion that: the Delaware River population as well as many of the other Atlantic sturgeon river populations have a unique haplotype; only a minority of the individual sturgeon sampled in each population carry the unique haplotype; the Hudson River and Delaware River populations of Atlantic sturgeon share unique haplotypes that are not found in any of the other Atlantic sturgeon populations; and the majority of individuals in each Atlantic sturgeon population carry haplotypes that are common to all or many of the sturgeon populations (Savoy *et al.,* 2017; Waldman *et al.,* 2013; Wirgin *et al.,* 2015b). Therefore, the unique A5 haplotype carried by some individuals in the Delaware River population does not support that the population is discrete.

The four new studies cited by the petitioner in the ''relevant literature'' use microsatellite DNA rather than mitochondrial DNA. In the case of microsatellite DNA, similar to the available information on mitochondrial DNA haplotypes, private alleles (*i.e.,* a version of a gene sequence that is found only in a single population) occur in Atlantic sturgeon populations and most Atlantic sturgeon populations have at least one private allele that is carried by at least one individual of that population. White *et al.* (2021a) found that the majority of the sturgeon groups tested contained at least one private allele across all loci. However, not all individuals of a population carry the unique allele. In addition, sampling bias can influence whether and where a private allele is discovered. For example, an allele may be detected by chance in one population and may be misidentified as a private allele because the same allele also occurs in other populations but has not yet been detected in samples from another population. The scientific literature for the genetics information available to us for the 2007 status review, the listing determinations, and the 5-year review of the New York Bight DPS all describe the methods used to analyze Atlantic sturgeon genetics data which include screening for multiple, specific, microsatellite loci, use of reference collections, and various analytical tools described in each scientific publication. The new genetic studies included in the petitioner's ''relevant literature'' also used these methods to further inform Atlantic sturgeon population structuring (White *et al.,* 2021a), the origin of sturgeon captured in the New York Bight directed fishery in the 1990s (White *et al.,* 2021b), the estimated spawning abundance for the Delaware River population (White *et al.,* 2022), and population structuring (*i.e.,* genetic differentiation between population segments) for the South Atlantic DPS (Wirgin *et al.,* 2023). None of the studies relied on identification of individuals from the Delaware River population based solely on the presence of unique haplotypes or alleles, and none provided new information for the Delaware River population's marked separation from the other populations such that it may be considered discrete as contemplated in the Services' DPS Policy. The information available in White *et al.* (2021a, 2021b, 2022) and Wirgin *et al.* (2023) does not include new information on the genetic uniqueness of the Delaware River population of Atlantic sturgeon. In fact, all of these studies are consistent with the existing information, that only some individuals carry the unique A5 haplotype or unique allele, which we presented in our listing determination and 5-year review for the New York Bight DPS. The information available in these new studies corroborates our listing determination that the Delaware River population of Atlantic sturgeon and the Hudson River population of Atlantic sturgeon are part of the same DPS.

The petitioner asserted that the Delaware River population of Atlantic sturgeon is clearly recognizable from both mitochondrial and nuclear DNA markers such that individuals are correctly assigned to the Delaware River genetic group at very high rates, among the highest rates for any river population. The petitioner is correct that individuals are assigned to the Delaware River population at relatively high rates; however, as described above, individual Atlantic sturgeon are not assigned to the Delaware River population based on the A5 haplotype or a private allele, as asserted by the petitioner, because those are only present in some individuals of the population. A much more rigorous methodology is used by the geneticists in the above-referenced studies to assign individual Atlantic sturgeon to the river and DPS of origin and a number of factors can influence assignment certainty. Those factors include the quality of the extracted DNA from the sample (*e.g.,* as a result of sample preservation) and the genetic baseline. The genetic baseline is a reference collection of samples from individual Atlantic sturgeon captured in a river and assumed to be natal to that river because the fish was captured either as a river resident juvenile (*i.e.,* too physiologically immature to leave the natal estuary) or as an adult in spawning condition on the known or presumed spawning grounds of that river's spawning population. The methods used to establish the genetic baseline and the expansion of the baseline are described in the literature provided by the petitioner (ASSRT, 2007; Waldman *et al.,* 2013; Wirgin *et al.,* 2015b; Kazyak *et al.,* 2021; White *et al.,* 2021a). The Delaware River reference collection is based solely on samples from river resident juveniles (Kazyak *et al.,* 2021), which makes for a very strong reference collection, and, in turn, imparts a high level of certainty when making individual assignments to the Delaware River population. White *et al.* (2021a) and Wirgin *et al.* (2023)—both new publications provided by the petitioner—include discussions of assignment certainty with respect to the southern DPSs and their reference collections that demonstrate the connection between the strength of the genetics baseline and assignment certainty. As noted in our listing determination (77 FR 5880, February 6, 2012), assignment certainty reflects several factors, including sampling methods used and samples available to develop the genetics baseline, but assignment certainty is not a stand-alone factor for determining that a population is discrete.

The petitioner also claims that fidelity to the natal spawning river is so high that the Delaware River population is reproductively isolated from all other river populations including the Hudson River population, and, effectively, zero cross-river migration occurs. It is unclear from the petitioner's statement whether they contend that the Delaware population is reproductively isolated such that only natal Delaware River fish spawn together, or whether, given the petitioner's use of the term ''effectively,'' the petitioner is stating that some low level of spawning occurs between the Delaware River population and the Hudson River population. As described in the listing determination, based on extensive research, including genetic analyses and tagging and tracking data, the vast majority of Atlantic sturgeon return to their natal rivers to spawn, with some studies showing only one or two individuals per generation spawning outside their natal river system (77 FR 5880, February 6, 2012). Our statements in the listing determination were based on the scientific research described in Wirgin *et al.* (2000), King *et al.* (2001), and Waldman *et al.* (2002); all of which are

also included by the petitioner in the ''relevant literature.'' The publications and reports available for the 5-year review of the New York Bight DPS did not change our conclusions regarding fidelity of the Delaware River or the Hudson River populations of Atlantic sturgeon to their natal river. Those publications and reports are also included in the petitioner's ''relevant literature.'' Of the four new genetic studies provided by the petitioner, White *et al.* (2021a) further investigates population structure by using an expanded baseline of more than 2,500 sampled Atlantic sturgeon and multiple analytical techniques to describe the coastwide population structure for Atlantic sturgeon. Their results further demonstrate that the Atlantic sturgeon populations exhibit high fidelity to their natal river at spawning.

The three other genetic publications provided by the petitioner do not provide new information that is relevant to the petitioner's statement that the Delaware River population is reproductively isolated or to the overall discreteness of this population. White *et al.* (2021b) describes new information based on genetic analysis of Atlantic sturgeon fin spines to identify the origins of Atlantic sturgeon captured in the New York fishery in the 1990s. White *et al.* (2022) describes the feasibility of a new method for estimating the number of spawning adults for the Delaware River population of Atlantic sturgeon. It is based on the knowledge that there is high spawning fidelity for the Delaware River population, but the purpose of the research was not to investigate spawning fidelity and it does not provide any new information that would support the petitioner's statement. Wirgin *et al.* (2023), while noting that their results for population structuring of all but the South Atlantic DPS will be reported elsewhere, states that the certainty of genetic assignments was high for both Atlantic sturgeon belonging to the Delaware River population and for Atlantic sturgeon belonging to the Hudson River population, and that the assignment certainty was even higher at the DPS-level. Other studies (*e.g.,* Kazyak *et al.,* 2021) have also found a higher level of certainty for DPS-level assignments compared to the river specific assignments within the DPS, which suggests that there is some limited genetic exchange between river populations within a DPS.

We described in the proposed listing rule why we proposed to list Atlantic sturgeon as five DPSs (75 FR 61872, October 6, 2010). In summary, we identified five discrete Atlantic sturgeon population segments based on the evidence that each discrete population is temporally and spatially separated during spawning. The results of genetic analyses further supported that there is strong fidelity to the natal river at spawning time. We concluded that the five discrete Atlantic sturgeon population segments meet the significance criterion of the DPS Policy because each reproduces in a unique ecological setting, and the loss of any of these discrete population segments would result in a significant gap in the range of the taxon. We responded to public comment, including comments from the petitioner (DRN Comment, November 9, 2010), to further explain why we were listing the Delaware River and the Hudson River populations of Atlantic sturgeon as a single DPS (see Response to Comments 13 and 16; 77 FR 5890 and 5892, February 6, 2012). In their comments, as in this petition, the petitioner claimed that the Delaware River population of Atlantic sturgeon is genetically unique as evidenced by the presence of the A5 haplotype, and that including the Delaware River population and the Hudson River population into a single DPS affords less ESA protection to the Delaware River population. We acknowledged in our responses to their comments that genetics could be used to distinguish Atlantic sturgeon that originate from the Delaware River population from those that originate from the Hudson River population. However, we also stated that even though the Delaware River population was genetically distinguishable from the Hudson River population, based upon our evaluation of whether Atlantic sturgeon population segments met the DPS Policy criteria, we could delineate five Atlantic sturgeon DPSs (as described in detail in the proposed rule). Based on application of the DPS Policy criteria, we determined that the Delaware River population did not meet the criteria of a DPS on its own because its spawning time was not temporally separated from that of the Hudson River population, the spawning habitat of both the Delaware River and the Hudson River populations occur within the same unique ecological setting, and analyses of the genetic data for population structuring indicated that the two rivers grouped together (see 75 FR 61876, October 6, 2010). We considered our decision during the 5-year review of the New York Bight DPS in light of new information that had become available since the listing, and we concluded that no changes to the listing of the New York Bight DPS were warranted. We have reviewed and considered the four new genetic studies provided by the petitioner and listed in their ''relevant literature.'' As described above, none of these provide new information regarding the discreteness of the Delaware River population of Atlantic sturgeon. On the contrary, one new study, White *et al.* (2021a), provides additional information that corroborates our listing determination for the New York Bight DPS. As described above, the three other genetic publications provided by the petitioner do not provide new information that is relevant to the petitioner's assertion that the Delaware River population is reproductively isolated or to the overall discreteness of this population.

A DPS must be both discrete and significant to the taxon as a whole. If a population is found to be discrete in accordance with the Service's joint DPS Policy, we next consider whether that discrete population is also significant in the context of the joint DPS Policy. In this case, the petitioner has not provided new information to show that the Delaware River population of Atlantic sturgeon may be discrete. We also note that the petitioner appears to be confusing the meaning of the term ''significance'' in the context of the joint DPS Policy with the word ''significance'' as it is used in everyday language. The joint DPS Policy directs the Services to consider available scientific evidence of the discrete population segment's importance to the taxon to which it belongs (61 FR 4722, February 7, 1996). However, the petitioner's ''relevant literature'' provides no scientific evidence that speaks to the significance of the Delaware River population of Atlantic sturgeon to the taxon as a whole. Instead, the petitioner claims that the Delaware population of Atlantic sturgeon is significant because of the population's historical abundance. This reference to the historical abundance of the Delaware River population does not provide any new information. In the proposed and final listing rules we described the significant range-wide declines in Atlantic sturgeon from historical abundance levels due to overfishing, and we stated that the best available data indicated that current numbers of spawning adults for each DPS are one to two orders of magnitude smaller than historical levels. We also described the Delaware River population as presumably very small and extremely vulnerable to any sources of anthropogenic mortality. In addition, the petitioner claims that the Delaware River population of Atlantic sturgeon

has ''unique adaptive characteristics that will help the species adapt to a changing environment.'' However, we could not find any information in the ''relevant literature'' that supported this statement nor any such information in our files.

We also do not consider here the petitioner's request to list a Delaware River DPS as endangered and to designate critical habitat for the DPS since both of these are dependent on a determination that the Delaware River population may warrant listing as a DPS. However, as described above, the ''relevant literature'' includes four new reports relative to impacts to the Delaware River population of Atlantic sturgeon or its habitat (*i.e.,* DRBC, 2022a, 2022b; ERC and Verdantas, 2022; Hagy, 2023), and each report speaks to an impact that we previously identified for the Delaware River population (*i.e.,* vessel strikes of the fish and low dissolved oxygen levels within its habitat). The petitioner did not include other information as required at 50 CFR 424.14(d). The petitioner did not include in the ''relevant literature'' section any new reports or publications relative to a need for a new critical habitat designation for the Delaware River population. Those reports or publications that were included (*e.g.,* Allen *et al.,* 2014; Breece *et al.,* 2013; Brundage *et al.,* 2009; Campbell and Goodman, 2004; and Lazzari *et al.,* 1986) were also considered and used by us when we designated critical habitat in the Delaware River for the New York Bight DPS (82 FR 39160, February 17, 2017; NMFS, 2017).

Petition Finding

We thoroughly reviewed the petition, the list of references provided by the petitioner, and other literature and information readily available to us, and find that the petition does not provide any new information regarding the discreteness of the Delaware River population of Atlantic sturgeon or otherwise offer substantial information not already considered in our status review report (ASSRT, 2007), the listing decision (77 FR 5880, February 6, 2012), or our 5-year review (NMFS, 2022). As such, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action to identify the Delaware River population of Atlantic sturgeon as a DPS may be warranted. We note that the population will continue to be listed as endangered as part of the New York Bight DPS of Atlantic sturgeon and that critical habitat in the Delaware River will continue to be designated as part of the critical habitat for the New York Bight DPS.

References Cited

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 23, 2024.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 240522–0143]

RIN 0648–BM66

Atlantic Highly Migratory Species; Bluefin Tuna General Category Effort Controls and Related Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, NMFS is modifying the process of scheduling restricted-fishing days (RFDs) by codifying a schedule of RFDs for the 2024 fishing year and subsequent fishing years, setting an additional non-codified RFD for the 2024 fishing year, establishing a General category default retention limit for large medium or giant bluefin tuna (BFT) on open days (*i.e.,* non-RFDs), and clarifying the BFT dealer regulations and the definition of a bluefin statistical document (BSD) tag. This final action is necessary to increase the likelihood of pacing General category landings to extend fishing opportunities through a greater portion of the General category time period subquotas. Lastly, this final action clarifies existing regulations to ensure better understanding and compliance by General category quota participants.

DATES: This final rule is effective July 1, 2024.

ADDRESSES: Additional information related to this final rule, including electronic copies of the final rule, and supporting documents, are available from the Atlantic Highly Migratory Species (HMS) Management Division website at *https://www.fisheries.noaa.gov/topic/atlantic-highly-migratory-species,* on *https://www.regulations.gov* (enter ''NOAA–NMFS–2024–0021'' in the Search box), or by contacting Larry Redd, Jr., or Erianna Hammond (see **FOR FURTHER INFORMATION CONTACT** section).

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* or Erianna Hammond, *erianna.hammond@noaa.gov,* at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

BFT fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.23 describes the daily retention limits for BFT including retention limits on RFDs. Section 635.27 divides the U.S. BFT quota, established by the United States and other members of the International Commission for the Conservation of Atlantic Tunas (ICCAT), among the various domestic fishing categories per the allocations established in the FMP and its amendments. Section 635.27(a)(1) defines and describes the General category quota for BFT. NMFS is required under the Magnuson-Stevens Act at 16 U.S.C. 1854(g)(1)(D) to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

On February 23, 2024, NMFS published a proposed rule and released a Draft Environmental Assessment (EA) (89 FR 13667, February 23, 2024). The proposed rule and Draft EA contain background information on the potential changes to the General category fishery and are not repeated here. The comment period for the proposed rule closed on March 25, 2024. NMFS received 34 written comments as well as oral comments during the public hearing held by webinar on March 18, 2024. The comments received, and the responses to those comments, are summarized in the Response to Comments section.

In developing the final measures, NMFS considered the objectives of this rulemaking along with public comments on the proposed rule and Draft EA. After reviewing this information, NMFS has concluded that the codification of a